

***United States Court of Appeals
for the Second Circuit***



APPENDIX

B
PVS.

75-1307

To be argued by
MICHAEL YOUNG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

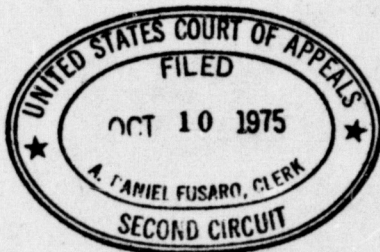
MICHAEL HALSEY BROWN,

Appellant.

Docket No. 75-1309

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
MICHAEL HALSEY BROWN
FEDERAL DEFENDER SERVICES UNIT
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New York, New York 10007
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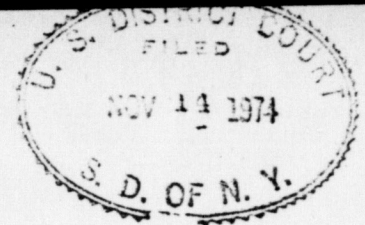
MICHAEL YOUNG,
SHEILA GINSBERG,
Of Counsel.

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DATE	PROCEEDINGS
11-14-74	Filed indictment. (Related to 74Cr853 and assigned to Pierce,J.)
11-27-74	Filed Govt's. memorandum of law in support of admission of evidence.
11-25-74	Deft. (atty. present) pleads not guilty to each count. Trial begins with a jury.
11-26-74	Trial continued.
11-27-74	Trial continued and adjourned to 12-2-74.
12-2-74	Trial continued.
12-3-74	Trial continued. Jury begins deliberations. Jury returns with a verdict and finds deft. not guilty on count 1 and guilty on each of counts 2,3 and 4. Pre-sentence investigation ordered. Sentence 1-15-75 at 4:45 P.M. Room 501. Bail of \$100,000 cash remains the same. Deft. continued remanded.....Pierce,J.

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1-15-75	<p>Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the maximum period authorized by law, to wit, TEN(10)YEARS on count 2, TEN (10) YEARS on count 4 and FIVE (5) YEARS on count 3 to run CONSECUTIVELY to each other, and for a study as described in Title 18, U.S. Code, Section 4208(c), the results of such study to be furnished to this Court within three(3) months, unless the Court grants further time, not to exceed three(3) months, whereupon the deft. shall be returned to this Court and the sentence of imprisonment herein imposed shall be subject to modification in accordance with Title 18, U.S. Code, Section 4208(b). Deft. is remanded.</p> <p>.....Pierce,J.</p> <p>Issued commitment 1-17-75.</p>		
1-28-75	<p>Filed commitment & entered return. Deft. delivered to Warden, Federal Detention Headquarters, N.Y.C. on 1-15-75.</p>		
4-17-75	<p>Filed JUDGMENT AND COMMITMENT (atty present) The Court adjudged the deft. guilty as charged and convicted and having on 1-15-75 been committed to the custody of the Attorney General or his authorized representative pursuant to Title 18, Section 4208(b), U.S. Code for imprisonment for a term of TEN (10) YEARS on count 2, FIVE (5) YEARS on count 3 and TEN (10) YEARS on count 4, (the maximum period), to run CONSECUTIVELY to each other, and for a study as described in Section 4208(c), of Title 18, U.S. Code and the deft. having been returned to this Court; and the Court having now received and considered the report of such study, It is Ordered and Adjudged that the period of imprisonment heretofore imposed be reduced to TEN (10) YEARS on count 2, FIVE (5) YEARS on count 3 and TEN (10) YEARS on count 4 to run concurrently with each other. Pursuant to the provisions of Title 18, Section 4208(a)(2), U.S. Code, the deft. shall become eligible for parole at such time as the Board of Parole may determine. Deft. is remanded.....Pierce,J.</p> <p>Issued commitment 4-18-75.</p>		
4-21-75	<p>Filed Govt's. memorandum of law, re: sufficiency of evidence.</p>		
4-24-75	<p>Filed commitment & entered return. Deft. delivered to Warden, Federal Detention Headquarters, N.Y.C. on 4-17-75.</p>		
7-22-75	<p>Filed transcript of record of proceedings dated 4-17-75.</p>		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x'
UNITED STATES OF AMERICA

-v-

:
INDICTMENT

MICHAEL HALSEY BROWN,

: S 74 Cr.

Defendant.

74 CRIM. 1068

The Grand Jury charges:

From on or about the 1st day of January, 1974 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere MICHAEL HALSEY BROWN, the defendant, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 112(a), 970, and 844(d) of Title 18, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York.

1. On or about August 5, 1974 the defendant, MICHAEL HALSEY BROWN, went to 10 West 90th Street, New York, New York.

MICROFILM

NOV 14 1974

2. On or about August 5, 1974 the defendant, MICHAEL HALSEY BROWN, registered at a hotel in Manhattan.

3. On or about August 6, 1974 the defendant MICHAEL HALSEY BROWN placed a quantity of dynamite on the property of United Nations Headquarters in Manhattan.

(Title 18 United States Code Section 371)

COUNT TWO

The Grand Jury further charges:

On or about the 6th day of August, 1974 in the Southern District of New York MICHAEL HALSEY BROWN, the defendant, unlawfully, wilfully and knowingly did attempt to assault, wound and offer violence to foreign officials and official guests at the headquarters of the United Nations by the use of a deadly and dangerous weapon.

(Title 18 United States Code Section 112(a))

COUNT THREE

The Grand Jury further charges:

On or about the 6th day of August, 1974 in the Southern District of New York MICHAEL HALSEY BROWN, the defendant, unlawfully, wilfully and knowingly did attempt to injure, damage and destroy real and personal property located within the United States and belonging to or utilized or occupied by an international organization, foreign officials and official guests.

(Title 18 United States Code Section 970)

SAS:ka
74-2795

COUNT FOUR

The Grand Jury further charges:

On or about the 5th day of August, 1974 in the Southern District of New York and elsewhere MICHAEL HALSEY BROWN, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce an explosive with the knowledge or intent that it would be used to kill, injure, or intimidate one or more individuals or destroy a building, vehicle, or other real or personal property.

(Title 18, United States Code, Section 844(d)).

George Argentine
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

MICHAEL HALSEY BROWN,

Defendant.

INDICTMENT

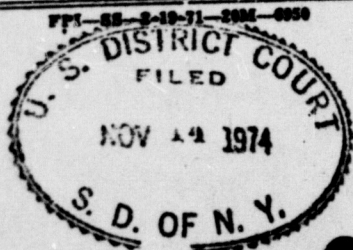
(in violation of 18 U.S.C. §§ 371,
112(a), 970 and
844(d).)

PAUL J. CURRAN

United States Attorney.

A TRUE BILL

George Argentine
Foreman.



NOV 25 1974 Dept (Cathy present) pleads not
each count. Trial begins with a jury

NOV 26 1974 Trial continued

NOV 27 1974 Trial continued and adjourned

DEC 2 1974 Trial continued -

DEC 3 1974 Trial cont'd - Jury begins delib-
Jury returns with a verdict and finds
not guilty on count 1 and guilty
of counts 2, 3 and 4. PS I order
January 15, 1975 at 4:45 PM -
Bail of \$100,000 cash remain
Dept cont'd
Remanded.

JAN 15 1975

Sentence
Dept (Cathy present) 2/aves. present -
is committed to custody of City Cor for 10 days
period and 10 days on count 4 to be
on count 3. Ten (10) years on count 4 to be
to each other, and for a study as described
Sect 47 of (C), the results from study
this Court within three (3) months, and if
further time, not to exceed (3) months, and if
shall be returned to this Court and if
imprisonment when imposed shall be
modification in accordance with T-16, 1974
Dept is remanded.

Final Sentence
Apr 17, 1975 - Dept having been committed to custody
for imprisonment pursuant to T-16, 4208(Cp) for + 10
for a study as described in Sect 4208(C) + Co
+ considered the report --- ordered that Dept be sent
Court 2, 5 years on Ct 3 + 10 years on Ct 4 to be
order. *For the Court*

guilty to
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12-2-74

liberations.

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Pierce, J.

C

judged that it
should be in a
at 2, Five yr
T-11, U.S.C.
remanded
the least open to
major and minor
the sentence of
subject of
Sect 4208

Pierce, J.
L
all Gen on 1-15
maximum period
not having more re
tored to 10 years
concurrently with

(cont'd)

1. Purs. to T-11, Sect 4208 (a) (2) dept
shall become eligible for parole
at such time as board of parole
may determine. Dept is remanded

Pierce, J.
R

US v Brown 1
74 Cr 1068

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J. Pierce

CHARGE OF THE COURT

THE COURT: Counsel, Madam Forelady, ladies and gentlemen of the jury:

Let me thank you for having demonstrated thus far the qualities of a good jury. You have been punctual, you have been attentive, you have been alert.

Further, we know that in order for you to serve on a jury you must make sacrifices in your lives, and I, on behalf of the court and counsel, wish to thank you for the sacrifices which you have made in order to participate as jurors in the administration of justice.

I also wish to thank the attorneys for their cooperation during this trial. They have represented their respective positions with considerable skill and with obvious serious dedication.

I ask you now to give me the same degree of attention which you have given thus far during this trial so that you might understand the principles of law which are applicable in this case.

First let me point out some general principles as to your duty, as to what you may and may not consider during your deliberations.

It is the judge's function, as I have told you before, to instruct you as to the law which applies in this

1 case. It is your duty as jurors to accept the law as I
2 state it to you. It is your duty to apply the law to the
3 facts as you find those facts to be during your deliberations
4 based upon the evidence in this case.
5

6 I ask you not to single out any one instruction
7 alone as stating the law but rather to consider the instruc-
8 tions as a whole, and the logical result of your application
9 of the law to the facts as you find those facts to be
10 should be a verdict either of guilty or not guilty.

11 Now, you are the sole and exclusive judges of the
12 facts. It is you who must pass upon the weight of the
13 evidence; you must determine the credibility of the witnesses
14 you must resolve such conflicts as there may be in the
15 evidence; you draw such reasonable inferences as may be
16 warranted by the testimony and the exhibits in this case.

17 With respect to any matters of fact, it is your
18 recollection and yours alone which governs. Anything that
19 the attorney for the government or the attorney for the
20 defendant may have said with respect to any matters in
21 evidence or as to any factual matters is not to be sub-
22 stituted for your own independent recollection of the
23 evidence or the facts in this case. Anything which I have
24 said with respect to any matters in evidence or any factual
25 matters is not to be taken by you in lieu of your own

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2 recollection.

3 You are not to assume that I have any opinion as
4 to whether or not this defendant is guilty or not guilty,
5 or as to the truth or the falsity of the charges asserted
6 in the indictment. The fact that I have asked questions
7 from time to time, denied motions or granted motions in the
8 course of this trial is not to be taken by you as any
9 indication that the defendant is believed by this Court to
10 be guilty or not guilty.

11 Further, the attorneys in this case have the right
12 on the offer of certain evidence to press legal objections,
13 and in doing so they are simply performing their duty.

14 In your deliberations to determine the facts
15 and whether the government has established the elements
16 of the crimes charged, you are to consider solely the
17 testimony which you have heard from the witnesses, any
18 stipulations of fact which the lawyers have agreed upon,
19 the exhibits which have been received in evidence, and
20 even any lack of any material evidence, but nothing else.

21 As you approach the performance of your function
22 as jurors in this case, that is, the determination of
23 whether the defendant is guilty or not guilty, please
24 remember that it is your duty to weigh the evidence calmly
25 and dispassionately, without sympathy or prejudice for or

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2 against either party. Any defendant appearing before this
3 court is entitled to have a fair and impartial trial regard-
4 less of any accidental characteristics or factors such as
5 place of birth or occupation or station in life.

6 The fact that the government is a party here or
7 that the prosecution occurs in the name of the United States
8 of America entitles it to no greater consideration than that
9 accorded to any other party and, by the same token, the
10 government is entitled to no less consideration. All
11 parties, government and individuals alike, stand equal
12 before the law.

13 The defendant on trial here has pleaded not guilty
14 to the counts with which he is charged. Consequently, if
15 the defendant is to be convicted the government has the
16 burden of proving each and every element of the crimes
17 charged beyond a reasonable doubt.

18 The burden of proving guilt beyond a reasonable
19 doubt never shifts. It remains upon the government through-
20 out the trial. The law never imposes upon a defendant in
21 a criminal case the burden of calling any witnesses or
22 producing any evidence, and you may draw no unfavorable
23 inference against the defendant because he did not take
24 the stand and testify.

25 In addition, you may not speculate as to why the

1 GW15

2 defendant chose not to testify, nor may you speculate as
3 to what the defendant might have stated had he chosen to
4 testify. In every criminal case there is a constitutional
5 rule which every defendant has the right to rely on. It
6 is the rule that no defendant is compelled to take the
7 witness stand. It is the prosecution which must prove a
8 defendant guilty as charged beyond a reasonable doubt. A
9 defendant is not required to disprove anything. He is not
10 required to establish his lack of guilt.

11 Also, the defendant has no obligation to call any
12 witness on his behalf or offer any evidence whatsoever.
13 In short, it is up to the government to prove beyond a
14 reasonable doubt every element of the crimes charged in
15 the indictment.

16 The defendant is presumed to be not guilty of
17 the accusations contained in the indictment, and this pre-
18 sumption continues throughout the trial and even during
19 the course of your deliberations in the jury room. So
20 the presumption of innocence is sufficient to acquit a
21 defendant of a crime charged unless it is overcome by
22 evidence that satisfies your minds beyond a reasonable
23 doubt of the defendant's guilt. Unless you are so satis-
24 fied, it is your sworn obligation to find the defendant
25 not guilty. If you are so satisfied, it is your sworn

2 obligation to find the defendant guilty.

3 And so the question arises what is a reasonable
4 doubt. It is a doubt which a reasonable person has after
5 carefully weighing all the evidence, the kind of a doubt
6 which would make you hesitate to act in the most important
7 affairs of your own life. Reasonable doubt is doubt which
8 appeals to your reason, your judgment, your common sense
9 and your experience. It is not caprice or whim or specu-
10 lation; it is not an excuse to avoid the performance of
11 an unpleasant duty, nor is it sympathy for any party.

12 If, after a fair and impartial consideration of
13 all the evidence or lack of evidence, you can honestly say
14 that you do not have an abiding belief as to the defendant's
15 guilt, then you have a reasonable doubt and it is your
16 duty to acquit.

17 On the other hand, if, after a fair and impartial
18 consideration of all the evidence, you can honestly say
19 that you do have an abiding belief as to the defendant's
20 guilt, then you have no reasonable doubt and it is your
21 duty to convict.

22 A reasonable doubt does not mean positive certainty
23 beyond all possible doubt. The law in a criminal case
24 is that it is sufficient if the guilt of a defendant is
25 established beyond a reasonable doubt, not beyond all

1 GW17

2 possible doubt.

3 From time to time you may have heard reference
4 made to direct evidence and to circumstantial evidence.
5 Let me explain the difference between the two.

6 Direct evidence is where a witness testifies to
7 what he saw, heard or observed, what he knows of his
8 own knowledge, something which comes to the witness by
9 virtue of his senses. That is direct evidence.

10 Circumstantial evidence is evidence of facts and
11 circumstances from which one may infer connected facts
12 which reasonably follow in the common experience of mankind.

13 Stated somewhat differently, circumstantial evi-
14 dence is a fact or a series of facts in evidence which have
15 a logical tendency to lead the mind to a conclusion that
16 another fact exists even though there is no direct evidence
17 to that effect.

18 Let me give you a simple example. If you should
19 find that you have a mouse running around the kitchen at
20 home coming through a hole alongside a water pipe, if
21 you should plug up the hole that the mouse apparently comes
22 through with steelwool and then if you should leave a box
23 of crackers out on a table in that room and you leave your
24 home for a few hours and then come back and find that the
25 box of crackers which was otherwise intact now has a hole

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2 in the bottom corner say about an inch in diameter and then
3 you look down at the water pipe and you find that the
4 steelwool which you had stuffed down alongside the pipe
5 has been pushed away, you could conclude that the mouse had
6 come through the hole by the water pipe and reached the
7 box and made a hole in it.

8 Now, you would arrive at this conclusion not from
9 direct evidence, you did not see it happen, but rather
10 from circumstantial evidence. In other words, you would
11 infer on the basis of reason and experience from one or
12 more established facts the existence of some further fact.

13 Now, circumstantial evidence, if believed, is of
14 no less value than direct evidence, for in either case you
15 must be convinced beyond a reasonable doubt of the guilt
16 of the defendant.

17 There are times when different inferences may
18 be drawn from the same facts, whether proved by direct or
19 by circumstantial evidence. The government asks you to
20 draw one set of inferences, the defendant another, and it
21 is for you and you alone to decide what reasonable
22 inferences you choose to draw from the evidence in this
23 case.

24 It is your duty to determine the reasonable
25 inferences to be drawn from the facts as you find those

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2 facts to be from the evidence, but you may not indulge in
3 guesswork or speculation.

4 Some of the evidence adduced by the government
5 was adduced in support of the conspiracy count of the
6 indictment. Some of the same evidence has also been
7 adduced in support of substantive counts, one or more sub-
8 stantive counts, of the indictment. If the evidence relates
9 to and is connected to the conspiracy count and the sub-
10 stantive count, there is nothing inconsistent in using parts
11 of the same evidence to prove that the defendant committed
12 a substantive crime and also to prove that he was a member
13 of the conspiracy.

14 Now, there are a number of factors which are not
15 evidence in this case and which you may not under any
16 circumstances consider during your deliberations.

17 First, if during the course of the trial a ques-
18 tion was asked and an objection was interposed and if I
19 sustained the objection, you are to disregard the question
20 and any alleged facts contained in that question. If
21 there was an answer to the question, you must disregard
22 the answer.

23 Similarly, if I ruled that an answer be stricken
24 from the record, you are to disregard the answer and the
question in your deliberations. They are not evidence and

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2 therefore cannot be considered by you in any respect.

3 Also, as I told you at the beginning of the trial,
4 an indictment is not evidence, it is simply a procedure
5 by which persons accused by a grand jury of crimes are
6 brought to trial. Whether the person accused is guilty or
7 not guilty of the crimes charged is determined by a trial
8 jury such as you.

9 Now, you as jurors are the sole judges of the
10 credibility of witnesses and also of the weight their tes-
11 timony deserves. You know that there is no automatic way
12 to tell who is telling the truth and who is not. Credibility
13 can be equated with believability. If a witness is credible,
14 you say he is believable.

15 You should carefully scrutinize all the testimony
16 given both on direct and cross examination and
17 the circumstances under which each witness has testified
18 and every matter in evidence which tends to show whether a
19 witness is worthy of belief. Consider the witness' ability
20 to observe the matters as to which he has testified and
21 whether the witness impresses you as having had an accurate
22 recollection of these matters.

23 When judging credibility, consider any relation
24 any witness may bear to any side of the case, the manner in
25 which each witness might be affected by the verdict and the

1 GW21

2 extent to which, if at all, each witness is either supported
3 or contradicted by other evidence in the case.

4 The ultimate question for you to decide in passing
5 on the credibility of witnesses is did the witness tell
6 the truth before you. It is for you to say whether a
7 witness' testimony at this trial was truthful or untruthful
8 in whole or in part. If you find that any witness has
9 wilfully testified falsely as to any material matter, you
10 may reject the entire testimony of the witness, or you
11 may accept such portion of it as you believe to be true.

12 You may recall that during the course of the
13 trial I gave you instructions with respect to certain evi-
14 dence or testimony presented. Let me repeat those instruc-
15 tions.

16 As to the newspaper clippings that were received
17 in evidence, I instruct you that they were not offered or
18 received in evidence to demonstrate the truth of what is
19 contained therein. In other words, the words in the clippings
20 were not offered as evidence or proof of what is stated
21 therein to have occurred. These items were rather offered
22 and received in evidence as some evidence to be considered
23 by you on the question of whether or not the crimes charged
24 against the defendant were in fact committed by him.

25 During the trial there were passages from a

2 particular book admitted into evidence. As to this, I
3 again instruct you that they were not received in evidence
4 to demonstrate the truth or accuracy of these passages.
5 For example, they were not received as proof of the formula
6 for thermite. These passages are to be considered by you
7 for whatever bearing, if any, they may have on the state
8 of mind and intent of the defendant here.

9 Also during the trial there was some testimony
10 concerning statements relating to any similar proposed
11 enterprises on the part of the defendant. that is, the
12 purported plan to saw off statues in Washington, D. C.
13 I caution you that this testimony is not to be considered
14 by you as showing the criminal character or disposition
15 of the defendant as far as the criminal acts charged in
16 this case are concerned. Rather it should be considered
17 by you, if at all, as probative, to whatever extent you
18 deem it so, of the required intent or design on the part
19 of the defendant to commit the offenses with which he is
20 charged.

21 Now, the rules of evidence ordinarily do not
22 permit witnesses to testify as to their opinions or con-
23 clusions. An exception to this rule exists as to those
24 we call expert witnesses.

25 Witnesses who by education and experience have

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2 become expert in some science, profession or calling may
3 state their opinions as to relevant and material matter in
4 which they profess to be expert and may also state their
5 reasons for the opinion.

6 In this case, Mr. James Lile and Mr. Willard
7 Cloyde were presented by the government as handwriting and
8 fingerprint experts, respectively. You should give their
9 testimony such weight as you think it deserves. Should you
10 decide that an expert witness is biased or prejudiced or
11 that the opinion of an expert witness is not based on
12 sufficient education and experience, or should you conclude
13 that the reasons given in support of the opinion are not
14 sound, or should you feel that it is outweighed by other
15 evidence, you may disregard the opinion entirely.

16 Lastly, I should tell you that, as you are well
17 aware, there have been several occasions during the course
18 of this trial for the lawyers to confer with this Court out
19 of your hearing. In such situations, you, the jury, should
20 in no wise feel slighted. You are not to speculate as to
21 what was being discussed. In the interest of justice and
22 to expedite a trial, it is necessary that conferences be
23 held at this bench between counsel and the Court. This
24 further serves to avoid the inconvenience of having the
25 jury constantly file in and file out. It serves further to

1 GW24

2 prevent the jury from becoming confused on technical legal
3 matters.

4 In short, such conferences have been held at
5 the bench during the conduct of this case to avoid your
6 having to listen to arguments on questions of law which
7 concerned only counsel and the Court.

8 Now, this completes my general instructions with
9 regard to your duty and function and with regard to what
10 you may or may not consider in your deliberations. I am
11 going to turn now to a discussion of the specific charges
12 against the defendant and instruct you as to the essential
13 elements which the government must prove beyond a reasonable
14 doubt in order to sustain the charges against the defendant.

15 If you wish to stretch, however, please take a
16 moment to do so.

17 (Pause.)

18 Now, the indictment in this case contains four
19 counts or accusations against the defendant. They break
20 down into one conspiracy count and three substantive counts.
21 I am going to discuss the conspiracy count first.

22 Count 1 of the indictment charges that the defendant
23 Michael Halsey, Brown, along with others conspired to
24 violate certain federal statutes.

25 I charge you that a conspiracy to commit a crime

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is a separate offense distinct and apart from the substantive crimes that the conspiracy was allegedly formed to accomplish.

Section 371 of Title 18 of the United States Code, which makes a conspiracy a crime, a federal crime, reads in part as follows:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to effect the object of the conspiracy, each is guilty of an offense against the United States."

I will now read to you Count 1 of the indictment in part.

The Grand Jury charges:

From on or about the 1st day of January, 1974, and continuously thereafter up to and including the date of the filing of this indictment --

What was the date of the filing of the superseding indictment?

MR. SCHAFFER: I believe November 14, your Honor.

THE COURT: -- November 14, 1974, in the Southern District of New York and elsewhere, Michael Halsey Brown, the defendant, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly combined, conspired,

1 GW26
2 confederated and agreed together and with each other to
3 violate Sections 112(a), 970 and 844(d) of Title 18 of the
4 United States Code.

5 Now, in order for you to find the defendant guilty
6 of conspiracy as charged in Count 1, the government must
7 establish the following elements beyond a reasonable doubt:

8 First, that some time between January 1, 1974,
9 and November 14, 1974, the date the indictment was filed,
10 a conspiracy as charged in the indictment existed between
11 the defendant and at least one other alleged co-conspirator.

12 Two, that the defendant knowingly and wilfully
13 associated himself with the conspiracy, that is, joined
14 it, aware of its objects.

15 And three, that the defendant or one of the
16 alleged co-conspirators knowingly committed at least one
17 of the overt acts set forth in the indictment at or about
18 the time and place alleged in furtherance of the conspiracy.

19 Now I will read those overt acts to you
20 shortly.

21 As to the first element, what is a conspiracy?
22 It is a combination or agreement between two or more persons
23 to accomplish some unlawful purpose, or to accomplish a
24 lawful purpose by unlawful means. It has been referred
25 to somewhat loosely as a partnership in crime.

1 GW27

2 The indictment here charges that the conspiracy
3 had as its object the violation of Section 112(a), Section
4 970 and Section 844(d) of Title 18 of the United States
5 Code. Thus, the government must prove that it was the pur-
6 pose of the conspiracy to violate these federal statutes.
7 The first section, 112(a), provides in part that:

8 "Whoever assaults, strikes, wounds or offers
9 violence to a foreign official or official guest"
10 shall be guilty of a crime.

11 The next section, 844(d), in general makes it
12 unlawful to transport in interstate commerce an explosive
13 with the knowledge or intent that it will be used to kill,
14 injure or intimidate any individual, or to unlawfully
15 damage any building or other real or personal property.

16 Finally, Section 970 makes it unlawful to attempt
17 to or actually injure, damage or destroy real or personal
18 property located within the United States and belonging to
19 or utilized or occupied by an international organization,
20 foreign officials and official guests.

21 Now I am going to define a number of these terms
22 for you so that you will understand what they mean.

23 Thus, in Count 1 of the indictment, the govern-
24 ment is charging that there was an agreement between the
25 defendant and others to accomplish an unlawful purpose, to

1 GW28

2 wit, the violation of these federal statutes.

3 Now, I emphasize that it takes two or more persons
4 to form a conspiracy. A person cannot conspire with himself,
5 and so you must first determine whether the government has
6 proven beyond a reasonable doubt that there was an agreement
7 between certain individuals to work together to achieve
8 some unlawful purpose.

9 In this regard, please note that it is not
10 necessary for all of the alleged members of the conspiracy
11 to be charged or to be tried together, nor is it necessary
12 that the identity of all the co-conspirators be known in
13 order to establish the existence of a conspiracy.

14 However, if you do not find beyond a reasonable
15 doubt that there was such an agreement as I have described
16 it to you between two or more persons, then you must find
17 the defendant not guilty of the conspiracy charged in Count 1.

18 It is not necessary, however, for the government
19 to prove that there was any formal agreement or arrangement.
20 Indeed, it would be extraordinary if there were such. Persons
21 associating together to violate the law are not likely to
22 put their understanding in writing or to make it public.

23 Thus, it is sufficient if two or more persons in
24 any manner, through any contrivance, impliedly or tacitly,
25 came to a common understanding to violate the law. Express

1 GW29

2 language or specific words are not required to indicate
3 assent or attachment to a conspiracy. Usually the only
4 evidence available is that of disconnected acts on the part
5 of the alleged individual conspirators.

6 If, upon consideration of the evidence in this
7 case, direct or circumstantial or both, you find beyond a
8 reasonable doubt that the minds of two or more persons met
9 so as to bring about a deliberate agreement to work together
10 in furtherance of the unlawful enterprise alleged in the
11 indictment, then proof of the existence of the conspiracy
12 is established.

13 In this connection, it is not necessary for the
14 government to prove the success or the completion of the
15 object or purpose of the conspiracy. As a conspiracy is
16 basically the agreement to violate the law, it may exist
17 even though the final objectives were never accomplished.

18 A conspiracy, if you find one, once formed is
19 presumed to continue as to each participant until either
20 its purpose has been accomplished or there has been some
21 affirmative act of withdrawal by that participant.

22 The period of time charged in the indictment
23 runs from on or about January 1, 1974, to November 14
24 of this year, the date of the filing of the indictment. It
25 is not necessary for the government to prove that the

1 GW30

2 conspiracy started and ended on these specific dates. It
3 is sufficient if you find that in fact a conspiracy was
4 formed and existed for some substantial time within the
5 period set forth in the indictment.

6 Now, if you get past step one, that is, if you
7 find beyond a reasonable doubt that an unlawful agreement
8 between two or more persons existed here, then step two is
9 to determine whether the defendant became a member of that
10 conspiracy knowingly and wilfully.

11 An act is done knowingly if it is done voluntarily
12 and intentionally and not because of mistake or accident
13 or for other innocent reason.

14 An act is done wilfully if it is done voluntarily
15 and intentionally and deliberately and with specific
16 intent to do something which the law forbids, that is to
17 say, to act with the purpose either of disobeying or dis-
18 regarding the law.

19 Now, in determining whether the defendant became
20 a member of the conspiracy, you must determine not only
21 whether he participated in it but whether he did so with
22 knowledge of its unlawful purpose. Did he join it with
23 awareness of at least some of the basic aims and purposes
24 of the conspiracy?

25 Knowledge may be inferred from a person's conduct,

1 GW31

2 from his acts, from his statements and from all the surround-
3 ing circumstances. It is not necessary that the defendant
4 be fully informed as to all of the activities and all of
5 the actors and details of the scope of the conspiracy in
6 order to justify the inference of knowledge on his part.

7 I wish to caution you that mere association with
8 one or more of the conspirators does not make one a member
9 of a conspiracy, nor is knowledge without participation
10 sufficient. What is necessary for you to determine is
11 whether the defendant participated in the conspiracy with
12 knowledge of at least some of its unlawful purposes and
13 with intent to aid in the accomplishment of those unlawful
14 ends. In other words, you may not find the defendant guilty
15 of the first count unless you find that he knowingly and
16 wilfully joined the conspiracy knowing that his acts were
17 a part of the unlawful enterprise.

18 You will recall that I have previously defined
19 wilfully and knowingly.

20 Now, if you find that, first, there was a conspiracy
21 and, next, that the defendant was a member of that conspiracy,
22 then you reach the third element which the government must
23 prove beyond a reasonable doubt, and that is that an overt
24 act to effect the objective of the conspiracy was committed
25 by at least one of the co-conspirators.

2 Now, an overt act is any step, action or conduct
3 which is taken to achieve or further the objective of the
4 conspiracy. The alleged overt acts set forth in the indict-
5 ment read as follows. They are three.

6 "In pursuance of the said conspiracy and to effect
7 the objects thereof, the following overt acts were committed
8 in the Southern District of New York:

9 "1. On or about August 5, 1974, the defendant,
10 Michael Halsey Brown, went to 10 West 90th Street, New
11 York, New York.

12 "2. On or about August 5, 1974, the defendant,
13 Michael Halsey Brown, registered at a hotel in Manhattan.

14 "3. On or about August 6, 1974, the defendant,
15 Michael Halsey Brown, placed a quantity of dynamite on
16 the property of the United Nations headquarters in Manhattan."

17 Now, obviously for a person to enter a building
18 or register at a hotel is not in and of itself criminal
19 conduct. However, an overt act need not be in itself a
20 criminal act. It can be any act as long as it is performed
21 in furtherance of the conspiracy.

22 The government need not prove that all the overt
23 acts alleged in the indictment were performed. It is
24 sufficient if it proves that one of them was performed
25 and that it was done in furtherance of the conspiracy

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2 charged.

3 Further, it is not necessary that each member of
4 the conspiracy committed or participated in the particular
5 overt act.

6 The indictment charges that the overt acts were
7 committed in the Southern District of New York, and I
8 instruct you as a matter of law that the County of New York
9 is in the Southern District of New York and the United
10 Nations is in the County of New York.

11 You may not find the defendant guilty of conspiracy
12 unless you find beyond a reasonable doubt that the defend-
13 ant or one of the alleged co-conspirators committed at
14 least one of the overt acts alleged in the indictment on
15 or about the date specified within the Southern District
16 of New York.

17 Finally, if, upon all the evidence that you
18 believe and consider relevant, you are satisfied that the
19 government has proved beyond a reasonable doubt each of
20 the elements of the crime of conspiracy, that is, one, that
21 a conspiracy existed; two, that the defendant knowingly
22 and wilfully joined it aware of its objects; and three,
23 one of the overt acts alleged was committed by the defendant
24 or a co-conspirator in furtherance of the conspiracy in
25 the Southern District of New York, then you are to return

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2 a verdict of guilty against the defendant.

3 If you are not so satisfied, then you are to
4 return a verdict of not guilty on the conspiracy count.

5 Now, there are three other counts. Count 2
6 reads as follows:

7 "The Grand Jury charges:

8 "On or about the 6th day of August, 1974, in
9 the Southern District of New York, Michael Halsey Brown,
10 the defendant, unlawfully, wilfully and knowingly did
11 attempt to assault, wound and offer violence to foreign
12 officials and official guests at the headquarters of the
13 United Nations by the use of a deadly and dangerous weapon."

14 Before you can find the defendant guilty of the
15 crime charged in Count 2, you must be convinced that the
16 government has proved the following four elements beyond a
17 reasonable doubt:

18 1. That on or about August 6, 1974, the defendant
19 attempted to assault or wound or offer violence to persons
20 present at the headquarters of the United Nations.

21 2. That such persons were foreign officials or
22 official guests.

23 3. That the defendant did so by means of a deadly
24 or dangerous weapon.

25 4. That the defendant did so unlawfully, knowingly

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and wilfully.

In order to find the defendant guilty of the crime charged in Count 2, you must first find that he attempted to assault or wound or offer violence to persons present at the headquarters of the United Nations.

To attempt means wilfully to do some act in an effort to bring about or accomplish something the law forbids to be done.

Count 2 charges the defendant with an attempt to assault, wound or offer violence.

An assault is any hostile gesture or threat, coupled with an apparent present ability in the one making the gesture or threat to commit violent physical injury upon another person.

An assault may be committed without actually touching, striking or committing bodily harm to another.

To wound has its common, everyday meaning: To injure or produce bodily harm.

To offer violence means to threaten violence or to create a condition of physical danger.

You are instructed that it is not necessary that the government prove that the defendant attempted to assault, wound and offer violence to officials at the United Nations. It is sufficient if you find beyond a reasonable

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2 doubt that the defendant attempted to do any one or more of
3 the acts charged, that he attempted to assault or attempted
4 to wound or attempted to offer violence to the persons
5 in question.

6 In considering this element of the crime, I remind
7 you that the government is not contending that the defend-
8 ant did actually assault, wound or offer violence to anyone.
9 It merely contends that he attempted to do so.

10 I instruct you that an attempt to assault, wound
11 or offer violence is just as much a violation of the law
12 as the actual acts.

13 The government has therefore satisfied the burden
14 of proof as to this element if you find it has proven beyond
15 a reasonable doubt that the defendant attempted to assault,
16 wound or offer violence to persons at the United Nations.

17 The government must also show that such persons
18 at the United Nations were foreign officials or official
19 guests. Congress has defined foreign official as any person
20 of a foreign nationality who is duly notified to the United
21 States as an officer or employee of a foreign government
22 or international organization and who is in the United States
23 on official business; and Congress has defined an official
24 guest as a citizen or national of a foreign country present
25 in the United States as an official guest of the government

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2 of the United States pursuant to designation as such by
3 the Secretary of State.

4 In order to convict the defendant of the crime
5 charged in Count 2, you must also find that in attempting
6 to assault, wound or offer violence to foreign officials
7 or official guests, the defendant used a deadly or dangerous
8 weapon.

9 As to this, I instruct you that a dangerous or
10 deadly weapon may be almost any object which, as used or
11 attempted to be used, may endanger a life or inflict great
12 bodily harm.

13 You recall that I told you that the government
14 was required to prove beyond a reasonable doubt that the
15 defendant acted unlawfully, knowingly and wilfully.

16 Unlawfully of course means contrary to law. So
17 to do an act unlawfully means to do wilfully something which
18 is contrary to law.

19 I have already defined for you what is meant by
20 the terms knowingly and wilfully when I instructed you on
21 the conspiracy count. I told you then that an act is done
22 knowingly if done voluntarily and intentionally and not
23 because of mistake or accident or for other innocent reason;
24 and an act is done wilfully if it is done voluntarily and
25 intentionally and deliberately and with a bad purpose or

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1 GW38

2 motive.

3 The government need not establish that the defendant
4 knew he was breaking the law or any particular rule. It
5 must, however, show bad purpose or motive on his part.

6 In determining whether the defendant knowingly
7 and intentionally committed the offense with which he is
8 charged in Count 2, issues of fact are presented and clearly
9 those issues concern what is in one's mind.

10 Now let's just sort of take a stretch break here
11 and regain some resiliency.

12 (Pause.)

13 It has been stated that you bring into the jury
14 box with you the common sense and experience of your
15 daily lives. It is obviously not always possible to
16 ascertain or prove directly what was the operation of the
17 mind or the intention of the defendant. You can't look
18 into his mind to see what his intentions were, but you
19 are able to consider all the facts and circumstances shown
20 by the evidence and the exhibits in this case, stipulations,
21 and draw your own conclusions with a reasonable degree of
22 accuracy as to what, if anything, the defendant's inten-
23 tions were.

24 Intent involves a mental attitude. From evidence
25 of a particular act, coupled with evidence of surrounding

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2 circumstances, one may choose to draw certain conclusions.

3 In other words, proof of the circumstances surrounding a
4 person's actions can supply an adequate basis for a finding
5 that the defendant acted knowingly and wilfully.

6 Intent can be adequately established by a showing
7 of reckless disregard for the consequences of one's actions.

8 Now, you will have to determine from the evidence
9 presented in this case what, if anything, was the intention
10 of the defendant.

11 Now, this completes my instructions with respect
12 to Count 2 of the indictment. To summarize, before you can
13 find the defendant guilty of the offense charged in that
14 count, you must find that the government has proven beyond
15 a reasonable doubt, one, that on or about August 6, 1974,
16 the defendant attempted to assault or wound or offer violence
17 to persons present at the headquarters of the United Nations;
18 two, that such persons were foreign officials or official
19 guests; three, that the defendant did so by means of a deadly
20 or dangerous weapon; and four, that the defendant did so
21 unlawfully, knowingly and wilfully.

22 If you find that the government has proven each
23 of these elements beyond a reasonable doubt, then you must
24 return a verdict of guilty as to this count. If you find
25 that the government has failed to prove each of these

2 elements beyond a reasonable doubt, then you must find the
3 defendant not guilty on this count.

4 Count 3 of the indictment charges a violation
5 of Section 970 of Title 18 of the United States Code and
6 reads as follows:

7 "The Grand Jury charges:

8 "On or about the 6th day of August, 1974, in the
9 Southern District of New York, Michael Halsey Brown, the
10 defendant, unlawfully, wilfully and knowingly did attempt
11 to injure, damage and destroy real and personal property
12 located within the United States and belonging to or
13 utilized or occupied by an international organization,
14 foreign officials and official guests."

15 Now, before you can find the defendant guilty of
16 the crime charged in this count, you must be convinced that
17 the government has proved beyond a reasonable doubt each
18 of the following elements:

19 1. That on or about August 6, 1974, the defendant
20 attempted to injure or destroy property.

21 2. That such property was located in the United
22 States at the United Nations.

23 3. That such property belonged to or was utilized
24 by an international organization, foreign official or
25 official guest.

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2 4. That the defendant did so unlawfully, wilfully
3 and knowingly.

4 The first element that you must find beyond a
5 reasonable doubt to have been proven before you can convict
6 the defendant is that the defendant attempted to injure,
7 damage or destroy property. The words "injure, damage or
8 destroy" have their common, everyday meaning. In this
9 context they mean to harm or to do violence to property and
10 to thereby render it unfit for its normal uses, either
11 temporarily or permanently.

12 In considering this element of the crime, I remind
13 you that the government is not contending that the defend-
14 ant actually injured, damaged or destroyed anything. It
15 contends that the defendant attempted to do so.

16 The statute in question, Title 18, United States
17 Code, Section 970, makes an attempt as much a crime as the
18 actual destruction.

19 The government has therefore satisfied its burden
20 of proof under this element of the crime so long as it has
21 proven beyond a reasonable doubt that the defendant attempted
22 to injure, damage or destroy the property in question.

23 Now, with regard to the second element, there
24 does not appear to be any dispute that the property was
25 located in the United States. Nevertheless, you must find

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2 beyond a reasonable doubt that the United Nations is property
3 located within the United States and, of course, here in
4 the Southern District of New York, which embraces New
5 York County, where it is situated.

6 The third element of Count 3 which you must find
7 is that the property which the defendant is charged with
8 attempting to damage or to destroy belonged to or was used
9 by an international organization, foreign officials or
10 official guests.

11 In discussing Count 2, I have already defined
12 foreign officials and official guests for you.

13 Congress has defined "international organization"
14 as a public international organization in which the United
15 States participates pursuant to any treaty or under the
16 authority of any act of Congress authorizing such participa-
17 tion and which shall have been designated by the President
18 through appropriate executive order.

19 I charge you as a matter of law that the United
20 Nations has been designated an international organization
21 through appropriate executive order.

22 Finally, if you find that the defendant attempted
23 to injure, damage or destroy property of the United Nations,
24 you must also find that he did so unlawfully, knowingly
25 and wilfully, and I have already defined the meaning of those

1 GW43

2 terms.

3 The final count of the indictment, Count 4, reads
4 as follows:

5 "The Grand Jury charges:

6 "On or about the 5th day of August, 1974, in the
7 Southern District of New York and elsewhere, Michael Halsey
8 Brown, the defendant, unlawfully, wilfully and knowingly
9 did transport in interstate commerce an explosive with
10 the knowledge or intent that it would be used to kill,
11 injure or intimidate one or more individuals or destroy a
12 building, vehicle or other real or personal property."

13 Before you can find the defendant guilty of the
14 crime charged in this count, you must be convinced that
15 the government has proved the following elements beyond a
16 reasonable doubt:

17 1. That on or about August 5, 1974, the defendant
18 transported certain objects or materials in interstate
19 commerce.

20 2. That such objects or materials constituted
21 explosives.

22 3. That such objects or materials were trans-
23 ported with the knowledge or intent that they be used either
24 to kill or injure or intimidate one or more individuals or
25 with the intent that they be used to destroy a building or
other real or personal property.

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4. That the defendant acted unlawfully, knowingly and wilfully.

The first element of the offense charged here is that the defendant transported certain objects or materials in interstate commerce. To transport anything in interstate commerce simply means to carry it across state lines. Therefore, if you find beyond a reasonable doubt that the defendant brought dynamite from Kentucky to New York, the government has met its burden of establishing that such dynamite was transported in interstate commerce.

If you find the requisite interstate transportation of the object or materials, you must next find that such object or materials transported in interstate commerce constituted an explosive.

I charge you as a matter of law that dynamite is an explosive within the meaning of the statute. You must nevertheless find beyond a reasonable doubt that the substance which the defendant is charged with transporting in interstate commerce was in fact dynamite. If you do so find, then the government has satisfied its burden of proof on this element of the offense.

Even if you find that the defendant transported explosives in interstate commerce, this is not sufficient for finding a violation of the statute. You must also find

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2 that the government has proven beyond a reasonable doubt
3 that he transported the explosives with the knowledge or
4 intent that they be used to kill, injure or intimidate one
5 or more individuals, or with the knowledge or intent that
6 they be used to destroy a building, vehicle or other
7 property.

8 I have already discussed with you what is meant
9 by the term "intent." It necessarily involves a question
10 as to what is in a person's mind.

11 Again I remind you that it is not always possible
12 to determine directly what's in a person's mind. It is
13 often necessary to infer intent from a person's acts,
14 statements and from all the surrounding circumstances.

15 I instruct you that the statute in question here
16 requires only that the government prove that the defendant
17 intended any one of the following acts: to kill or to
18 injure or to intimidate one or more individuals or to
19 destroy property.

20 I have already defined some of these terms,
21 namely, to injure and to destroy.

22 The term "kill" has its common, everyday meaning.

23 Count 4, in addition, charges the crime of
24 intending to intimidate one or more individuals through
25 the use of explosives. "Intimidate" simply means to

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2 frighten or inspire fear. Therefore, if you find beyond a
3 reasonable doubt that the defendant transported explosives
4 across state lines with the intent of frightening or
5 intimidating persons at the United Nations, that is sufficient
6 to find him guilty under the statute. On the other hand,
7 if you find that while the defendant transported explosives
8 in interstate commerce he did not do so with the knowledge
9 or intention that it would be used to kill, injure or
10 intimidate one or more individuals or destroy a building,
11 vehicle or other real or personal property, then you must
12 return a verdict of not guilty on Count 4.

13 Finally, before you may find the defendant guilty
14 of Count 4, you must find that the government has shown
15 that the defendant acted unlawfully, knowingly and wilfully
16 as I have described or defined those terms to you.

17 The defendant's counsel has argued that because
18 the dynamite placed in the United Nations lacked a blasting
19 cap that it could never have detonated and thus the crimes
20 charged could never have been committed.

21 I remind you that the crimes with which the
22 defendant is charged are conspiracy and attempts. He is
23 not charged with actually committing any acts of violence
24 or destruction.

25 I instruct you that should you find that the

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2 dynamite was unlikely to explode given the manner of assembly
3 and the means employed, according to the government, to
4 detonate it, this is no defense to any of the crimes charged.

5 Well, I have described the charges contained in
6 each of the four counts in the indictment. I have outlined
7 the essential elements of those counts. You should note
8 that a separate crime or offense is charged in each of the
9 four counts of the indictment. Each charge and the evidence
10 pertaining to it should be considered separately. The fact
11 that you find the accused guilty or not guilty as to one
12 of the offenses charged should not control your verdict as to
13 the other offenses charged.

14 Also, you are not to consider in any way or
15 speculate about the sentence which a defendant may receive
16 if found guilty. It is the function of the jury to
17 deliberate and determine whether a defendant is guilty or
18 not guilty on the basis of the evidence and the instructions
19 of the Court, and it is the function of the judge to
20 determine the disposition of the defendant's case thereafter.

21 The most important part of the case is the part
22 which you now as jurors are about to play, because it is
23 you who will have to decide whether the defendant is guilty
24 or not guilty of the counts charged.

25 I know you will try the issues that have been

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2 presented to you according to the oath which you have taken
3 as jurors. Now, in that oath you promised that you would
4 well and truly try the issues joined in this case and a
5 true verdict render. If you follow that oath and try the
6 issues without confusing your thinking with emotions, you
7 will arrive at a just verdict.

8 As you deliberate, please be careful to listen
9 to the opinions of other jurors as well as to ask for an
10 opportunity to express your views. No one juror holds the
11 center of the stage in the jury room. No one juror controls
12 or monopolizes deliberations. You must all express your
13 views and exchange views. If you become convinced that
14 your original view was wrong with respect to any matter,
15 don't be afraid to change your vote because of pride in
16 your original opinion or in reaction to the stubbornness
17 of another person. On the other hand, do not surrender
18 your honest belief solely because of the opinion of your
19 fellow jurors or because you are outnumbered.

20 Now, you understand that in a criminal case in
21 this court your verdict on each count must be unanimous,
22 that is, it must be joined in by each and every one of you.

23 The form of your verdict will be either guilty
24 or not guilty on each count of the indictment that is before
25 you.

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2 During your deliberations, you may send for any
3 exhibits in evidence that you may desire to review. You
4 may request that any testimony be read back to you. You
5 may request any portion of this charge to be read back to
6 you.

7 Once you are directed to begin your deliberations,
8 the Court will send in a copy of the indictment for your
9 information. Please remember that it is merely an accu-
10 sation, it is not evidence. It is simply sent in to aid
11 you understanding what the charges are.

12 Any request which you make should be made in
13 writing. You should not discuss this case with anyone from
14 this point forward except through the medium of writing
15 directed to the Court. Your deliberations must be limited
16 to the jury room. You mustn't discuss the case outside
17 the jury room. You mustn't deliberate outside the jury
18 room.

19 You must nor reveal the standing of the jurors
20 at any time during your deliberations, that is, you are
21 not to indicate the split of any vote on any count for
22 any verdict to anyone, including the Court.

23 Now, Madam Forelady, lead the jury out for a
24 few moments and then I will call you right back in. Don't
25 talk about the case yet. You have not been directed to

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2 deliberate.

3 (Jury leaves courtroom.)

4 THE COURT: All right, I will take any objections.

5 MR. HANES: Your Honor, in behalf of the defend-
6 ant, we would respectfully object to that part of the
7 Court's charge on Count 2 regarding the definition of the
8 words "offer violence" as in essence to threaten violence
9 or create unusual physical danger, I believe.

10 The defendant's contention is that "offer violence"
11 in the context of that statute requires a communicated
12 offer of violence.

13 THE COURT: Do I take it that you do not have a
14 specific proposed substitute to offer? Is that not so?

15 MR. HANES: Your Honor, what I was doing was
16 remaking the same objections that we argued yesterday, I
17 believe.

18 THE COURT: I understand that. I think for the
19 purposes of making the record clear I have to ask you if
20 you wish to present to me an alternative to be presented
21 to the jury.

22 MR. HANES: Your Honor, in essence, I would offer
23 to the Court that the definition of "offer violence" as
24 given by the Court have the following words added to the
25 end of that sentence which says: "To threaten violence or

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create unusual physical danger and such threat or physical danger must be communicated to or made known to a foreign official or official guest."

THE COURT: I suppose you continue to oppose that, Mr. Schaffer?

MR. SCHAFFER: I do.

THE COURT: The Court declines to give that additional instruction.

What further objections?

MR. HANES: That is all for the defendant.

THE COURT: From the government?

MR. SCHAFFER: One brief note, your Honor, and I may not have heard accurately.

Did the Court instruct the jury that they may convict on the conspiracy count if they find that any one of the objectives -- that any one of the stated purposes was proved? In other words, they need not find that the conspiracy had all three purposes but need only find the conspiracy had one of the three purposes.

THE COURT: Let me check.

MR. HANES: Do you mean overt acts?

MR. SCHAFFER: The conspiracy had as its object the violation of any one or more of the three statutes charged as the objective of the conspiracy.

THE COURT: Apparently I have not charged that.
Let me just finish this to make sure.

MR. HANES: Your Honor, did I understand the Court to say you are going to supplement your charge?

THE COURT: I have not done it and I think it is a proper request.

MR. HANES: Your Honor, we would object to that on the ground that to supplement your charge at this time on that point adds undue emphasis to that point in that count, that the alternative as stated in the indictment is sufficient and as read to the jury is sufficient to raise that issue and show the alternatives.

THE COURT: Your objection is noted and overruled. Anything further?

(No response.)

THE COURT: Bring them back in.

MR. SCHAFFER: There is some proposed language to the general effect that my comment was addressed to in the government's request number two, page two.

THE COURT: That may be helpful. Request two?

MR. SCHAFFER: Request two, page two, under the heading "Second."

THE COURT: How is that going to be helpful, Mr. Schaffer?

2 MR. SCHAFFER: Only insofar as it says, your
3 Honor, that --

4 THE COURT: One or more?

5 MR. SCHAFFER: Yes. It wasn't a verbatim text but
6 only a suggestion that it might be helpful to consider
7 portions of that.

8 THE COURT: Thank you. Bring the jury in.

9 MR. HANES: Your Honor, in that context, what
10 is the Court's policy and practice with regard to sequestra-
11 tion of the jury during deliberation?

12 THE COURT: Off the record.

13 (Discussion off the record.)

14 THE COURT: Mr. Hanes, the policy generally in
15 this district is that we do not sequester juries normally,
16 so that if they are still deliberating when we get to the
17 end of a particular day, we tend to send them home with an
18 instruction.

19 MR. HANES: Will they be sequestered for the rest
20 of this day?

21 THE COURT: Yes. They will be sequestered up to
22 the dinner hour, and then I will take under consideration
23 how long they have been at it and whether or not we ought to
24 let them go out for some air and for dinner. We will see.

25 MR. HANES: We request that they be kept together
during their deliberations.

1 GW54
2 THE COURT: We will see.

3 Off the record.

4 (Discussion off the record.)

5 THE COURT: Let the record show that the govern-
6 ment has furnished a clean copy of the superseding indict-
7 ment. It has been shown to Mr. Hanes and the Court intends
8 to send it in via the marshal once the jury has returned
9 to begin their deliberations.

10 (Jury enters courtroom.)

11 THE COURT: Now just one additional matter.

12 I told you earlier that the indictment here
13 charges that the conspiracy had as its object the violation
14 of Sections 112(a), 970 and 844(d) of Title 18 of the
15 United States Code. Thus, the government must prove that
16 it was the purpose of the conspiracy to violate these
17 federal statutes.

18 I correct that. You need not find that it was
19 the object of the conspiracy to violate each of these
20 federal statutes. It is sufficient if you find there was
21 a conspiracy to violate one or more of them, that is, that
22 the object of the conspiracy was to violate one or more
23 of those federal statutes.

24 Now, with that I now instruct you that the time
25 has come for you to begin to deliberate, and please follow
the instructions I have already given you.

GW55

Madam Forelady, lead the jury back to the jury room.

Alternate jurors please remain in your seats.
Swear the marshals.

(Marshal sworn.)

THE COURT: All right, Marshal, lead them in.
Take a copy of the indictment and hand it to them once they are in the room.

(At 12:05 P. M., the jury retired to commence their deliberations.)

6/10/74
9/10/74
[May 3, 1974]

Dear Jim:

Was just thinking about you the other day. I'm in need of a dirty old man. Seriously, here's what I need. Send this creep every peice of pornography and smutty newspaper you can get your hands on and put him on every vile mailing list you can think of (wrapped so his co-workers can see what it is when they open the P.O. Box):

Harold E. Selman

P.O. Box 1706

Louisville, Kentucky 40201

I haven't been able to get his home address yet but this should do for openers.

I don't deal in drugs. [I abandoned the dynamite idea when I found the extent Big Brother keeps tabs on you after you learn how to use it. I'm studying chemistry and will cook my own if I need it.]

Here's another little project for you (a practical joke on Noah): write to Jack Fredericks Delmar Route Box 98 Harrison Arkansas (he's Noah) and tell him you're a girl who went for a ride on the back of his knucklehead chopper in early 1970, got pregnant and had his kid, and you and junior are coming down to meet him as soon as possible (say he picked you up hitchhiking in Hollywood). Tell him you had a hard time tracking him and are living with your parents in Chicago (say you were age 14 when he picked you up). He'll get a real kick out of it. Use a street return address if possible.

Ever see that movie "The Sting"? I've got a similar project going I've named "Operation Tuna Fish" that seems to be working quite well. If I knew more about this joker in Oaklawn I might be able to work a similar scam on him (for a percentage). 300-man ride coming up this month. Give me a blast if interested.

[Best Wishes,

Mike]

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

57 A id

FPI-MI-4-8-74-30M-2061



Dynamite in sling

Members of the New York City bomb squad use a sling between two long poles as they carry five sticks of dynamite from the United Nations Wednesday. The explosives were found in the

U.N. meditation room located in the General Assembly, low building at left. The city police deactivated the dynamite without incident. (UPI Photo)

Explosives planted in U.N. room

NEW YORK (UPI) — Five sticks of fused dynamite with a "30-yard killing radius" were found lying next to a cigarette and book of matches Wednesday in the United Nations Meditation Room. The explosives were removed by a city bomb squad without incident.

It was the first time in the history of the United Nations that a bomb was actually planted in the New York headquarters, although many bomb threats have been received and two fake bombs once were discovered in the washrooms of the visitor's section.

U.N. security guards

found the dynamite in a brown paper bag planted beneath a bench in the Meditation Room in the General Assembly building when the room, where delegates often stop to pray before beginning work, was opened for the day.

A U.N. official said no calls were made alerting them to the existence of the bomb. The official said the dynamite was probably planted Tuesday night "just to prove that a bomb could be planted."

City Bomb Squad officer Charles Wells said the dynamite was "60 per cent gelatin and could have caused considerable damage if it had exploded.

It probably would have had about a 30-yard killing radius."

Officials said a book of matches and an unlit cigarette were found lying near the fuse.

Bangladesh flood toll exceeds 800

DACCA, Bangladesh (AP) — The official death toll rose to more than 800 Wednesday as heavy flooding brought fresh death and devastation to Bangladesh.

Deaths were reported in

Certificate of Service

10/10 . 1975

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

W. H. D. Y.